

April 30, 2009

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Local Number Portability Porting Interval and Validation Requirements*, WC
Docket No. 07-244

Dear Ms. Dortch:

On April 29, 2009, Greg Rogers of Level 3 Communications, LLC (Level 3) and I met with Jennifer Schneider, Legal Adviser to Commissioner Copps, Mark Stone, Legal Adviser to Commissioner Adelstein, Nicholas Alexander, Legal Adviser to Commissioner McDowell, Ann Stevens, Deputy Division Chief, Wireline Competition Bureau, Competition Policy Division, Marilyn Jones and Melissa Kinkel, both of the Competition Policy Division staff. The NPRM tentatively concluded that the Commission should adopt a reduced 48 hour porting interval for simple ports, which are also the ports subject to the 4-field validation rule.¹ Level 3 believes that a two-business day rule can work for simple ports, particularly when there is e-bonding.

Level 3 is a wholesale and enterprise telecommunications carrier. Virtually all of the ports handled by Level 3 are complex ports, as that term has been defined by the Commission.

¹ *Numbering Resource Optimization*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 95-116, 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19562 ¶ 63 (2007) (*Declaratory Ruling and NPRM*).

The Commission's longstanding definition of simple ports, as recommended by the NANC and the LNPA Working Group, excludes any ports that "include a reseller."² The Commission's tentative conclusion did not extend to complex ports, including reseller ports. The record has not addressed the feasibility or trade-offs in applying such an interval to any subset of complex ports, and there has not been reasonable notice that the Commission would be considering such a proposal.³ As an example, Verizon, which on April 28, 2009 for the first time raised the issue of changing the definition of simple ports to include resellers, did not address changing the definition of simple ports in its comments or reply comments. These porting transactions involving resellers are not comparable to simple ports, which is why the NANC and the Commission excluded them from the definition of simple ports eight years ago. As just one example, in the case of resellers, there can be multiple resellers involved in a port, with only the ultimate retail carrier possessing the information necessary for even 4-field validation. Even just a single reseller adds another layer to the validation process. Thus, before the Commission adopts any porting intervals for non-simple ports, it should seek specific comment on specific proposals and obtain NANC input on such proposals. That comment and input, however, need not preclude adopting a porting interval rule with respect to simple ports, as currently defined, and as was noticed in the NPRM.

If the Commission were to adopt a shortened porting interval for some subset of non-simple ports, such as reseller ports, underlying carriers such as Level 3, together with their reseller customers, would not be in a position to perform any validation. Level 3 would implement a shortened interval process for reseller port-outs if mandated by the Commission to do so. In considering whether to change the definition of simple ports, however, the Commission should weigh the increased risk of error and service disruption against the benefits it seeks to achieve with respect to these non-simple ports. It should also consider whether there are other impacts that stem from such a change in definition. This is best done through a further notice and NANC referral.

The Commission should also take the opportunity to reiterate that, under Section 258, the winning carrier, not the porting-out carrier, is responsible for ensuring the accuracy of its port request and that it has the authorization to request the port. This is especially important if some porting-out carriers must port without any validation in order meet reduced intervals. Submission of porting requests for erroneous telephone numbers, even if inadvertent, results in unauthorized carrier changes in violation of Section 258, and may disrupt customer service.

² *Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability; Embargo Petition for Waiver of Deadline*, Order, FCC 08-31, 23 FCC Rcd 2454, 2425, n. 4 (2008); *Declaratory Order and NPRM*, 22 FCC Rcd at 19556, n. 153; *CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 96-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23715 ¶ 45 n.112 (2003) (*Intermodal Number Portability Order* or *Intermodal Number Portability FNPRM*) (citing North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket No. 95-116 (filed Nov. 29, 2000)).

³ A single sentence at the NPRM sought comment generally on "any other concerns regarding the LNP process more generally, including the port validation process and porting intervals for non-simple ports." NPRM ¶ 66. However, that did not provide reasonable notice of extending the proposed 48 hour porting interval beyond those ports specifically defined as simple ports.

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In addition, the Commission should once again make clear that porting out carriers may not indefinitely refuse to port based on a dispute as to validity, or for any other reason. The Commission should make clear that carriers have an obligation to complete the port, even if there will continue to be a dispute as to whether the port request is proper or the customer was authorized to port the number.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "John T. Nakahata", with a stylized flourish at the end.

John T. Nakahata

Counsel to Level 3 Communications, LLC